

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Order Instituting Investigation on the  
Commission's Own Motion into the  
Operations, Policies and Practices of Uber  
Technologies, Inc. (TCP 38150) and Uber  
Black Sub-carriers Operating on the Uber  
Black Platform.

Investigation 21-12-001

**UBER TECHNOLOGIES, INC.'S RESPONSE TO  
ORDER INSTITUTING INVESTIGATION**

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**I. PRELIMINARY STATEMENT**

Uber Technologies Inc. ("Uber") shares the California Public Utilities Commission's (the "Commission's") commitment to the integrity of the charter party carrier system, and to providing the highest standards of passenger safety and reliability on its Uber Black product line. These commitments are essential to Uber's success, and to the success of its Uber Black product in particular. Subcarriers and their affiliates who defraud Uber and the Commission by submitting forged and false information in violation of the Commission's rules threaten the goodwill Uber has earned for its Uber Black product line, and risk irreparable harm to Uber's reputation and competitive standing with Uber Black riders and the public. Uber accordingly welcomes the Commission's Order Instituting Investigation ("OII") into subcarrier misconduct on the Uber platform in 2019, and looks forward to collaborating with the Commission to investigate these issues to reduce fraudulent subcarrier operations in the charter party industry.<sup>1</sup>

Rather than aiding and abetting the violations of the subcarriers at issue here, Uber has

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<sup>1</sup> On December 15, 2021, ALJ Stevens issued an e-mail ruling granting Uber an extension to file this response on January 6, 2022.

already taken steps to enhance its own fraud prevention program. In September 2019, just over a year after receiving its own Charter Party Carrier (“TCP”) license, Uber began implementing a two-step authentication process designed to ensure that putative subcarriers not only (i) present current and valid TCP licenses and other documentation before gaining access to Uber’s platform, but also confirm that (ii) those licenses and documents *in fact belong to and certify the individual subcarriers and affiliates* submitting them. Before establishing this two-step procedure, Uber relied exclusively on Commission data to confirm whether a certificate submitted by a subcarrier was current and valid. However, this data did not provide Uber with a basis to determine whether a given TCP certificate covered a particular subcarrier applicant, and as Uber discovered, bad actors exploited this vulnerability to submit sham applications using valid TCP certificates belonging to third parties. To prevent this fraud, Uber in late 2019 introduced a second step, further augmented in early 2020, that requires Uber’s document review agents to cross-reference a subcarrier applicant’s TCP certificate against the California Secretary of State’s business registry to determine whether the applicant is listed as a director or officer of the entity holding the submitted TCP certificate. Since instituting this second layer of security, Uber believes that it has made significant strides toward reducing subcarrier fraud of the type committed by the 33 subcarriers identified in the Commission’s Consumer Protection and Enforcement Division (“CPED”) staff report.

Uber intends to cooperate with the Commission and CPED in this investigation to address fraudulent activities by subcarriers taking advantage of the Uber platform, including by partnering to develop and/or improve data-collection and data-sharing programs that will permit Uber to more swiftly identify and block bad actors. And Uber appreciates, supports, and will cooperate fully with the Commission’s efforts to bring enforcement actions against any bad actor who has

exploited and damaged the public or Uber by providing fraudulent services in violation of Commission rules.

## **II. BACKGROUND**

### **A. The Commission Requires Subcarriers to Truthfully Report License Status.**

Before a subcarrier may contract to provide TCP services for a prime carrier, Commission General Order 157-E, Part 3.04 provides that the subcarrier must present proof that it “holds Commission authority as a charter-party carrier.”<sup>2</sup> The prime and subcarriers must then enter into “a written” agreement that “shall contain the carriers’ names, TCP numbers, and the services to be provided.”<sup>3</sup> Any charter-party carrier “who fails to obey, observe, or comply” with this “order” may be “subject to a penalty of not more than two thousand dollars (\$2,000) for each offense.”<sup>4</sup> The same penalty may apply to any charter-party carrier if it “procures, aids, or abets” such a “violation.”<sup>5</sup>

### **B. Several Uber Black Subcarriers Defrauded Uber and the Commission.**

After reviewing records submitted to Uber by a sample of Uber Black subcarriers, the Commission’s Transportation Enforcement Board (“TEB”) identified 145 subcarriers with “discrepancies” between their submissions and state records that demonstrated “potential signs of falsification.”<sup>6</sup> Focusing on a subset of that group with substantial operations, TEB discovered that 33 of these subcarriers had orchestrated a wide range of sophisticated misconduct designed to defraud Uber and obtain (and/or retain) access to the Uber platform under false pretenses.<sup>7</sup> Several

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<sup>2</sup> General Order 157-E, Part 3.04.

<sup>3</sup> *Id.*

<sup>4</sup> Cal. Pub. Util. Code § 5413.

<sup>5</sup> *Id.*

<sup>6</sup> *See* OII App’x A at 13-14.

<sup>7</sup> *Id.* at 21-44.

subcarriers, for example, were found to have gained access to the Uber platform by submitting false or forged TCP certificates that corresponded to valid TCP numbers listed in the Commission's database, but unknowable to Uber from a review of that database, did not in fact belong to the subcarriers submitting them.<sup>8</sup> In other cases, subcarriers also fraudulently submitted falsified vehicle registrations and insurance certificates along with their applications.<sup>9</sup> And in yet other cases, subcarriers who had failed to follow Commission rules to maintain valid TCP licenses continued to operate on the Uber platform, misrepresenting to Uber that their credentials were current and that their operations were authorized.<sup>10</sup>

The fraud was directed at Uber and calculated to elude Uber's detection. In one instance, a subcarrier doing business as "Music Express" forged a TCP certificate bearing a valid TCP number, but with the forged signature of a former Director of the Commission's Safety and Enforcement Division.<sup>11</sup> And in another, profile holders operating under a single subcarrier—Eric's Luxury Limousine—appear to have conspired to organize several additional affiliates to falsely represent to Uber that they were authorized to operate using valid TCP permits that did not in fact belong to them or Eric's Luxury Limousine, or authorize them to provide carrier services.<sup>12</sup>

These examples reflect a broader campaign by the identified subcarriers to exploit the popularity and good reputation of Uber's platform for their own personal gain. The subcarriers' various schemes have predictably damaged Uber by tarnishing its flagship Uber Black luxury

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<sup>8</sup> *Id.* at 29-32, 38-40.

<sup>9</sup> *Id.* at 41-44.

<sup>10</sup> *Id.* at 26-29, 32-38.

<sup>11</sup> *Id.* at 39-40 (presenting the forgery in Figures 1-2).

<sup>12</sup> *Id.* at 30. In still other instances, several unique affiliates of two other subcarriers (Art Tobek Inc. and Fox Limo 2) attempted to use another subcarrier's TCP permit. Uber's document review agents eventually intercepted the misconduct and rejected the affiliates. After Uber's intervention, many of these affiliates uploaded valid TCP permits in order to be reinstated on the platform.

product. Uber markets that product to enterprise and executive clients by touting the quality and professionalism of its drivers and their vehicles.<sup>13</sup> Revelations that even a small number of drivers using the Uber platform committed fraud and operated without proper licensure could compromise Uber Black's standing among the discerning customer base it serves, and threaten to cause Uber to lose ride bookings and category position to competitors. In no circumstance would it have made sense for Uber to countenance this misconduct, and as discussed below, Uber took swift action to intercept it once notified of its existence.

### C. Uber Heightens Subcarrier Scrutiny.

Since 2018, Uber has required its document review agents to conduct weekly sweeps to deactivate non-compliant subcarriers from the Uber platform based on information provided by the Commission's Transportation Licensing and Analysis Branch. However, when the Commission began requesting information related to certain subcarriers operating on Uber's platform in mid-2019, Uber became aware of certain instances of subcarrier fraud and recognized the risk it posed to its Uber Black product. Uber swiftly mobilized to address it. Uber recognized that the Commission database Uber relied upon to verify subcarrier license and credentialing submissions *only* contains information sufficient to verify the current status of a given TCP permit; it *does not* contain information capable of alerting Uber to the type of fraud the TEB had uncovered, where a bad actor falsely claims authorization under an otherwise valid credential.

Uber found a solution in the Secretary of State's business registry database. Although no law required Uber to consult that database, in about September 2019, Uber determined that cross-referencing TCP license information against the Secretary of State's corporate officer/director records enabled Uber to confirm whether a given TCP permit in fact authorized a particular

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<sup>13</sup> See, e.g., *id.* at 8 & 8 n.12.

subcarrier's operations. In late 2019 (and again in early 2020), Uber completed internal audits of the TCP permits of the Uber Black operators using its platform, and further refined this second-level review. Uber has since required internal document review agents to consult both the Commission and Secretary of State databases. Given the second-level review and its consistent application since early 2020, Uber expects data from 2020 and 2021 to demonstrate a reduction in the sort of fraud that the TEB uncovered from 2019, and that the CPED describes in its report.<sup>14</sup>

### **III. PROPOSED SCOPE AND SCHEDULE**

Uber agrees that the scope of issues to be evaluated in this proceeding should include (i) whether Uber Black subcarriers defrauded Uber and operated unlicensed subcarrier services by presenting false or forged certification materials in violation of the Commission's General Orders, the California Public Utilities Code, and Commission Rule 1.1, (ii) whether the Commission should penalize the subcarriers for these violations, (iii) whether Uber, despite having been a target of this conduct, nevertheless bears any responsibility for it, and (iv) whether Uber should be penalized for failing to prevent its subcarriers' misconduct in order to promote compliance with Commission rules, even if the misconduct already damages Uber and naturally presents that incentive.

Uber is optimistic that this matter can be resolved through cooperation guided by shared interests. Should this proceeding go forward in an adversarial posture, however, Uber respectfully requests a hearing where it could present witnesses and evidence for the Commission's consideration, and a schedule that would permit Uber to collect that evidence. Uber proposes to confer with CPED on an appropriate schedule, but suggests setting a hearing date in October of

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<sup>14</sup> For this and other related reasons, Uber requests a schedule for this proceeding that will afford it time needed to collect and present this updated information for the Commission's consideration.



2022 with an opportunity for discovery and collaboration with CPED in the interim.<sup>15</sup>

#### **IV. DISCUSSION**

The CPED report identifies 33 subcarriers who fraudulently gained access to and provided services through the Uber platform.<sup>16</sup> The report further identifies four of these subcarriers who presented false or forged materials to Uber misrepresenting that they possessed active and valid TCP licenses.<sup>17</sup> The remaining subcarriers presented other required documents to Uber that “do not match” public records and also appear to be “fraudulent documents” submitted “to Uber to establish eligibility on the Uber platform.”<sup>18</sup>

Uber agrees these subcarriers should be penalized for their misconduct, and through this proceeding, Uber will cooperate with the Commission’s enforcement efforts. But a penalty against Uber is neither appropriate nor necessary. Were this matter to proceed to a hearing, Uber anticipates it would present the following points, recognizing that Uber needs time to fully investigate the issues raised.

##### **A. Uber Supports Commission Action Against Subcarriers Who Defrauded It.**

Above all, Uber seeks to use this proceeding to ensure that the identified bad actors posing as authorized subcarriers do not harm the public or tarnish the Uber Black product.<sup>19</sup> Uber will cooperate with the Commission to the fullest extent possible to achieve this outcome.

Additionally, Uber will continue to make data available to the Commission to identify other offending subcarriers acting in violation of Commission rules. And Uber proposes to work with

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<sup>15</sup> Uber does not believe the subcarrier Respondents have responded to the Order Instituting Investigation. Their absence may further complicate discovery and evidence gathering.

<sup>16</sup> See OII App’x A at 15 (Table 1).

<sup>17</sup> *Id.* at 18 (Table 2).

<sup>18</sup> *Id.* at 19.

<sup>19</sup> See OII App’x A at 21-44 (describing these subcarriers violations).

the Commission to develop more effective prevention protocols on a go forward basis. One area of possible collaboration concerns updating the Commission’s databases to contain a broader and more accurate range of carrier information. Improving these databases will better position Uber and other TCP holders to detect violations of Commission rules and deactivate offending subcarriers.

**B. Holding Uber Strictly Liable for Its Subcarriers’ Fraud Is Not Necessary to Promote the Commission’s Goals.**

Uber recognizes the Commission’s authority to enforce its regulations, including under a strict liability standard where necessary to promote compliance with its rules.<sup>20</sup> A penalty under that standard is not necessary in this case, however, since Uber shares the Commission’s enforcement goals and is already naturally incited to curb subcarrier fraud to prevent damage to Uber’s reputation and competitive standing.<sup>21</sup> But if the Commission were inclined to consider penalizing Uber, several mitigating factors counsel against a penalty.

**1. Uber was a victim, not a perpetrator, of the subcarriers’ fraudulent conduct.**

The CPED report makes clear that Uber was the primary target of the misconduct uncovered by the TEB investigation. Subcarriers submitted falsified and forged documents *to Uber* in order to gain *unauthorized access to Uber’s platform and Uber’s premium product offering*. By infiltrating Uber’s ecosystem through subterfuge, the subject subcarriers availed themselves of Uber’s investment in the Uber Black brand, misappropriating for themselves access to premium luxury customers that Uber (and legitimate Uber Black operators) earned through

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<sup>20</sup> See, e.g., *People v. Coria*, 21 Cal. 4th 868, 876-77 (1999) (explaining that there is an “exception to the mens rea requirement” that permits strict liability for “purely regulatory offenses” with “light penalties and no moral obloquy or damage to reputation” where “the primary purpose of the statute[] is regulation” and “enforcement” and not “punishment or correction”).

<sup>21</sup> See, e.g., *supra* § II.C (describing how Uber responded *sua sponte* to reports of fraud by investing in preventive and corrective measures).

developed goodwill and the reputation of the Uber Black product. Because the market for premium black car service is competitive, any perceived deficiency in Uber's offerings can drive customers to rivals, potentially irreparably. And that is exactly what the identified subcarriers' violations have posed.

It makes little sense to punish Uber in this context. Uber continues to risk suffering damages from the subcarriers' fraudulent activity, and already holds every incentive to root out fraud on its platform. Punishing Uber for failing to prevent its own injuries despite best efforts would seem inequitable, especially when Uber is already invested in enforcing the Commission rules that were violated and needs no further deterrent to promote compliance.

**2. Uber has removed fraudulent subcarriers from its platform and adopted new procedures to intercept fraud.**

To that end, Uber's actions demonstrate that enforcement is not necessary to spur Uber's cooperation in the enforcement of Commission rules. Uber responded to its own preliminary findings and the Commission's inquiries by independently developing better preventative measures—i.e., requiring document review agents to (i) consult both the Secretary of State's databases as well as the Commission's, and (ii) conduct weekly compliance checks and sweeps—and applying them to remove potential bad actors from the Uber platform. Uber took this action on its own. The Commission did not need to threaten penalties to obtain Uber's attention or cooperation because their interests are aligned: Uber *benefits* when subcarriers comply with Commission rules, and *suffers* when they do not.<sup>22</sup> Forcing Uber to incur additional injuries now would not yield more enthusiastic cooperation; Uber is enthusiastically cooperating already. With all respect for the Commission's authority and ultimate discretion as to its exercise, any further

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<sup>22</sup> See *supra* §§ IV.A, IV.B.1.

punishment at this stage would, for these reasons, be gratuitous.

**C. Uber Did Not Aid or Abet the Subcarriers' Fraud.**

Uber also understands that the Commission has been asked to consider holding Uber liable under California Public Utilities Code § 5413, which is not a strict liability statute, but subjects carriers to liability for aiding, abetting, or procuring a violation of the Commission's rules.<sup>23</sup> Were such charges to proceed, they would be inappropriate.

"California courts have long held that liability for aiding and abetting depends on proof the defendant had actual knowledge of the specific primary wrong the defendant substantially assisted."<sup>24</sup> Aiding or abetting thus requires proof of "[1] intentional participation with [2] knowledge of the object to be attained."<sup>25</sup> "[K]nowledge alone, even specific knowledge, is not enough to state a claim for aiding and abetting."<sup>26</sup> Uber could only be liable as an aider or abettor if it could be shown that Uber not only "knew that" its subcarriers were violating the Commission's rules but also "acted with the intent of facilitating the commission" of those violations.<sup>27</sup>

Uber respectfully represents, and would if necessary prove, that it did not act with the intent of facilitating any of its subcarriers' misconduct. Any charge against Uber pursuant to California Public Utilities Code § 5413 would accordingly lack a supporting factual basis.

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<sup>23</sup> See OII App'x at 18-21 (setting forth CPED's basis for proposing this offense).

<sup>24</sup> *Casey v. U.S. Bank Nat'l Ass'n*, 127 Cal. App. 4th 1138, 1145-46 (2005) (citing *Lomita Land & Water Co. v. Robinson*, 154 Cal. 36, 47 (1908)).

<sup>25</sup> *Lomita*, 154 Cal. at 47.

<sup>26</sup> *George v. eBay, Inc.*, 71 Cal. App. 5th 620, 641 (2021).

<sup>27</sup> *Gerard v. Ross*, 204 Cal. App. 3d 968, 983 (1988).

## V. CONCLUSION

As set forth above, Uber looks forward to working with the Commission to resolve this matter in a way that fosters the shared goal of ensuring that Uber Black's services are safe and reliable.

Dated: January 6, 2022

/s/ Robert Maguire

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